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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,281	06/24/2003	William Ian Young	006-349-300	1719
2292	7590	08/12/2005	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			UPTON, CHRISTOPHER	
			ART UNIT	PAPER NUMBER

1724

DATE MAILED: 08/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/602,281

Applicant(s)

YOUNG ET AL.

Examiner

Christopher Upton

Art Unit

1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-8, 10-17, 19 and 20 is/are allowed.
- 6) ☒ Claim(s) 1, 9 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

1. Claims 9 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 9 and 18 recite that the microbe is a formula from the USEPA NCP Product schedule. It is unclear as to what microorganisms are on this schedule, or whether the schedule changes with time. Therefore, the claims are vague and indefinite.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hater in view of Francis or VanErdewyk.

Hater discloses a container for holding microorganisms in the form of a powder on a carrier to remove oil from water, substantially as claimed. Hater does not disclose that the container is a floater. It is known to float a container for holding or dispensing microorganisms, as exemplified by Francis and VanErdewyk. It would therefore have been obvious for one skilled in the art to float the container of Hater, to bring the microorganisms to the level of the oil.

4. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over VanErdewyk in view of Schlaemus et al.

VanErdewyck discloses a floating container for dispensing microorganisms. VanErdewyck does not disclose that the microorganisms are in the form of a powder, pellet or tablet, nor that they are used to digest hydrocarbons. It is known to use a microcapsule, which is a form of powder, pellet or tablet, to hold oil digesting microorganisms. It would therefore have been obvious for one skilled in the art to use the device of VanErdewyck to dispense such microorganism microcapsules, in view of the general purpose of VnErdewyck being to dispense treatment materials, such as microorganisms; and the ability of the microcapsules of Schlaemus to be dispensed by any known dispensing means.

5. Claims 2-8, 10-17, 19 and 20 are allowed.

Claims 9 and 18 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

The recitation of a system and method for removing hydrocarbons from a body of water comprising a floater containing microbes, wherein the floater is formed of porous polymeric foam patentably distinguishes over the prior art of record.

6. Applicant's arguments filed on April 1, 2005 have been fully considered but they are not persuasive.

Applicant argues that the recitation of "Oppenheimer Formula" has been removed, and that claims 9 and 18 are therefore no longer vague and indefinite. It I submitted that the recitation of the USEPA NCP Product schedule remains vague and

indefinite, as there is no generic terminology as to what is on the schedule, and that the schedule is likely to change with time.

Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues that Francis does not disclose that the microorganisms are in the form of a powder, tablet or pellet, but rather, the device functions as an incubator. It is submitted that it Hater discloses the use dried microorganisms on a carrier in a similar application, and that therefore, to float the device of Hater, as the device of Francis or another similar device disclosed by VanErdewyk is floated, would have been obvious for one skilled in the art.

It is also submitted that it would have been obvious to dispense oil digesting microorganisms in the form of a powder, tablet or pellet, as disclosed by Sclaemus, by any known dispenser, such as the floating microorganism dispenser of VanErdewyk.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Upton whose telephone number is 571-272-1169. The examiner can normally be reached on 7:30-5:00, off every other Monday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on 571-272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher Upton
Primary Examiner
Art Unit 1724